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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARIO NAVARRO,

Plaintiff,

No. 2:09-cv-1878 KJM KJN P

vs.

DEBRA HERNDON, et al.,

Defendants.

ORDER

_____/

Plaintiff is a state prisoner proceeding without counsel and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. The court ordered service of plaintiff's amended complaint on September 13, 2010. (Dkt. No. 28.) Service of process has been successful for fourteen of the seventeen named defendants.¹ However, three defendants remain unserved: Frishman,² Shelton, and O'Brien.³ Plaintiff has filed a motion to compel discovery in

¹ The following defendants were served process and have subsequently appeared in this action: Nicholas, Vasquez, Kernan, Morrow, Walker, Kelly, Johnson, Sclafani, Baker, Grannis, Baxter, Costa, Soliman, and Griffin.

² The court recognizes that service of process is still pending with the U.S. Marshal for defendant Frishman. (See Dkt. No. 46, ordering service on January 4, 2011.) However, the passage of time indicates that more accurate information is required. (Cf. Dkt. No. 52, waiver of service returned executed by defendant Griffin, for whom service of process was ordered the same date as for Frishman.)

³ The court recognizes that the correct spelling of these defendants' names may currently be unresolved; both plaintiff and defendants' counsel must consider this variable in their efforts

1 order to obtain from defendants' counsel the requisite information to serve process on these
2 defendants (Dkt. No. 57), and seeks an extension of time within which to effect such service
3 (Dkt. No. 58). Meanwhile, on November 19, 2010, before all defendants were served,
4 defendants filed a motion to dismiss plaintiff's amended complaint. (Dkt. No. 38.) Plaintiff has
5 filed an opposition to that motion. (Dkt. No. 48.)

6 Good cause having been shown, IT IS HEREBY ORDERED that:

7 1. Plaintiff's motion to compel discovery (Dkt. No. 57) is granted in part, as
8 follows:

9 a. Within fourteen (14) days after the filing date of this order, counsel for
10 defendants (who is an attorney with the California Attorney General's office) shall obtain, to the
11 best of his ability and including all reasonable inquiries, the current information necessary to
12 effect service of process on defendants Frishman, Shelton, and O'Brien, and shall provide such
13 information to plaintiff.

14 b. Defendants' counsel shall contemporaneously file with the court a notice of
15 compliance, or explanation of noncompliance with this directive.

16 2. Plaintiff's motion for an extension of time (Dkt. No. 58) within which to effect
17 service of process upon defendants Frishman, Shelton, and O'Brien is granted in part, as follows:

18 a. Within ten (10) days after receipt of the information from defendants' counsel,
19 plaintiff shall submit to the court the following documents necessary to effect service of process
20 on defendants Frishman, Shelton, and O'Brien:

21 i. The attached Notice of Submission of Documents;

22 ii. Three completed USM-285 forms (one for each defendant);

23 iii. Four copies of the endorsed complaint filed August 10, 2010 (Dkt.

24 No. 24);⁴ and

25 _____
26 to comply with this order.

⁴ The court previously provided plaintiff with a copy of his 488-page file-endorsed complaint. (Dkt. No. 21, at 24.)

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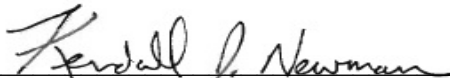
iv. One completed summons form.⁵

b. Within the same deadline, if any of the requested information remains unavailable, plaintiff shall submit an affidavit explaining the omission, and may request that one or more of these defendants be dismissed from this action;

3. The undersigned will address defendants' motion to dismiss (Dkt. No. 38) in a separate order; and

4. The Clerk of Court is directed to send plaintiff three USM-285 forms, along with an instruction sheet, and a blank summons.

DATED: April 14, 2011


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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⁵ It is preferable that plaintiff use a copy of the summons previously served on the other defendants; alternatively, a new summons may be served.

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FOR THE EASTERN DISTRICT OF CALIFORNIA

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Plaintiff,

No. 2:09-cv-1878 KJM KJN P

vs.

DEBRA HERNDON, et al.,
Defendants.

NOTICE OF SUBMISSION
OF DOCUMENTS

_____ /

Plaintiff hereby submits the following documents in compliance with the court's
order filed _____:

- _____ completed summons form
- _____ completed USM-285 forms
- _____ copies of the August 10, 2010 Amended Complaint

OR

_____ Affidavit stating why this information is not available
and/or requesting dismissal of one or more defendants

_____ Date

_____ Plaintiff